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OGC 71-0001

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31 December 1970

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Defense Appropriation Act

1. This memorandum supplements my memorandum of 7 December 1970 on the same subject.
2. The House and the Senate have now approved the second conference report on the Department of Defense Appropriation Bill. The text of the free world forces authorization, with the so-called Fulbright amendment, is attached.
3. The first conference report on the Appropriation Bill came out with a proviso to the Fulbright amendment, which Mr. Mahon and others felt was necessary because of the restrictive effects of the Fulbright amendment. That proviso is as follows:

Provided further, That nothing contained in this section shall be construed to prohibit support of free world or local forces in actions designed to promote the safe and orderly withdrawal or disengagement of U. S. Forces from Southeast Asia or to aid in the release of Americans held as prisoners of war.

The House accepted the first conference report, but the full Senate rejected it, partly because of the above proviso. The bill then went back to a second conference and was taken up on the floor of the House and Senate on 29 December. The second conference report again added a proviso to the Fulbright amendment in slightly different form as follows:

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Provided further, That nothing contained in this section shall be construed to prohibit support of actions required to insure the safe and orderly withdrawal or disengagement of U. S. Forces from Southeast Asia, or to aid in the release of Americans held as prisoners of war.

4. There was considerable floor debate, principally focusing on this proviso and occupying almost thirty pages of the Congressional Record. Senators Fulbright, Cooper and Javits all maintain that this language could be interpreted to completely nullify the restrictive effects of the Fulbright amendment. Senators Ellender, Allott, and Young, as conferees on the Appropriation Bill, maintained that the true meaning of this language is completely consistent with the spirit and intent of the Fulbright amendment. In pursuing this interpretation, Senator Fulbright raised the question of whether this new proviso was consistent with the spirit of the lengthy 20 August 1970 colloquy among Fulbright, Stennis, and others on the language of the Defense Authorization Bill. Fulbright inserted that entire colloquy into the Record. Senators Stennis and Young assured Fulbright that this new proviso was intended to be restrictive and to grant no more authorization than contained in the Defense Authorization Bill. They went on to state that in their view this new proviso was consistent with the colloquy on the Defense Authorization Bill. Senators Young and Allott stated they had heard nothing during the conference which would indicate that the House conferees would interpret the proviso differently from the interpretation the Senate conferees were placing on it during the floor discussion.

5. Senators Fulbright, Cooper, and Church stated that, on the basis of the assurances of the Senate conferees' interpretation of the proviso, they would then vote to accept the conference report, although they continued to maintain that the language was much too broad.

6. While it may be argued that in fact Mahon places a different interpretation on the proviso, and while the legal technicalities could long be debated, it is my view that the

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situation is little changed. At best, if we were faced with new circumstances requiring new and different courses of action, this language might provide some basis for agreement among those concerned, including the Congressmen, that such actions would not be barred as a matter of law.



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LAWRENCE R. HOUSTON
General Counsel

Attachment

cc: DDCI
Executive Director-Comptroller
DDP
D/PPB
SAVA
C/FE
Legislative Counsel

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S 21380

December 29, 1970

CONGRESSIONAL RECORD - SENATE

SECTION 838(a)—SUPPORT OF FREE WORLD FORCES

SEC. 838. (a) Not to exceed \$2,500,000,000 of the appropriations available to the Department of Defense during the current fiscal year shall be available for their stated purposes to support: (1) Vietnamese and other free world forces in support of Vietnamese forces; (2) local forces in Laos and Thailand; and for related costs, on such terms and conditions as the Secretary of Defense may determine: *Provided*, That none of the funds appropriated by this Act may be used for the purpose of paying any overseas allowance, per diem allowance, or any other addition to the regular base pay of any person serving with the free world forces in South Vietnam if the amount of such payment would be greater than the amount of special pay authorized to be paid, for an equivalent period of service, to members of the Armed Forces of the United States (under section 310 of title 37, United States Code) serving in Vietnam or in any other hostile fire area, except for continuation of payments of such additions to regular base pay provided in agreements executed prior to July 1, 1970: *Provided further*, That nothing in clause (1) of the first sentence of this subsection shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos: *Provided further*, That nothing contained in this section shall be construed to prohibit support of actions required to insure the safe and orderly withdrawal or disengagement of U.S. forces from Southeast Asia or to aid in the release of Americans held as prisoners of war.

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Appropriations

SENDER WILL CHECK CLASSIFICATION ON TOP AND BOTTOM			
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OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	Executive Director-Comptroller	1/6	<i>W</i>
2	Director of Central Intelligence	Rec'd 5 Jan 71	
3			
4	General Counsel	7 Jan 71	<i>LMK</i>
5			<i>pu</i>
6			
ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks: Dick: With the legislative process now complete, we plan to examine with PPB each proposed transfer of DOD funds to the Agency in light of the law and extensive legislative history against the actual fact situation of the proposed expenditures.			
<i>DCI sent</i> <i>5 Jan 71</i> <i>W</i>		<div style="border: 1px solid black; width: 150px; height: 50px; margin: 0 auto;"></div> Lawrence R. Houston	
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
General Counsel			1/4/71
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FORM NO. 1-67

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